

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

RECEIVED

NOV - 9 1992

ORIGINAL  
FILE

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Order To Show Cause  
Directed Against

MARIO J. GABELLI

and

GABELLI FUNDS, INC.

MM Docket No. 92-201

To: The Honorable Joseph Stirmer  
Chief Administrative Law Judge

MOTION FOR WAIVER

Gabelli Funds, Inc. ("GFI") and Mario J. Gabelli (referred to herein, either individually or collectively, as "Investors"), by their attorneys, hereby seek a waiver of Section 73.3555(c) of the Commission's rules, 47 C.F.R. § 73.3555(c).<sup>1/</sup>

1/ Section 73.3555(c) provides as follows:

(c) One-to-a-Market Rule. No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the AM station; or

No. of Copies rec'd  
List A B C D E

CHS

Investors hold a twenty-percent voting stock interest in Rockland Communicators, Inc., and West-Land Communicators, Inc. which, respectively, are the licensees of WRKL(AM), New City, New York, and WXPS(FM), Briarcliff Manor, New York. Investors also hold interests in Chris-Craft Industries, Inc. ("CCII") representing 11.24 percent of the voting power in the company. On August 24, 1992, BHC Communications, Inc. a subsidiary of CCII, acquired television station WWOR-TV, Secaucus, New Jersey. (See FCC File No. BTCCT-920514KE.)

The Grade A contour of WWOR-TV, as computed in accordance with Section 73.684 of the Commission's rules, encompasses the entire community of license of WXPS(FM). The Grade A contour of WWOR-TV also encompasses the entire community of license of WRKL(FM).<sup>2/</sup>

Note 7 to Section 73.3555 provides that the Commission will "look favorably" upon applications for waiver of Section 73.3555(c) that involve radio and television combinations in the top twenty-five television markets where there will be at least thirty separately owned, operated, and controlled broadcast

---

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with § 73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s) or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

47 C.F.R. § 73.3555(c).

2/ Joint Stipulation, October 13, 1992 ("Joint Stipulation"), at ¶¶ 1 and 2, which is Attachment A hereto.

licensees after the proposed combination.<sup>3/</sup> The Note further provides that the "voice count" is to be based on an examination of television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market.<sup>4/</sup>

WWOR-TV and the two radio stations are located in the New York City market, which is ranked first among television markets.<sup>5/</sup> In 1989, the Commission found that there were 93 separate voices in the New York City market.<sup>6/</sup> There has not been a decisionally significant reduction in the number of separate voices since then.<sup>7/</sup>

In connection with the transfer of control of WWOR-TV, Inc., licensee of WWOR-TV, from Pinelands, Inc., to BHC Communications, Inc., the Commission granted a temporary waiver of Section 73.3555 with regard to Investor's interests in WWOR-TV and the two radio stations.<sup>8/</sup> Nevertheless, the Commission declined to act on the request for permanent waiver at that time, "because we want to be fully apprised of all [Investors'] interests,

---

3/ 47 C.F.R. § 73.3555(c), Note 7. ("Top 25 Market/30 Voices" waiver test). See Memorandum Opinion and Order (MM Docket No. 97-7), 66 R.R.2d 1115 (1989); Second Report and Order (MM Docket No. 87-7), 65 R.R.2d 1589 (1989).

4/ 47 C.F.R. § 73.3555(c), Note 7.

5/ See market map in 1992 Broadcasting & Cable Market Place at E-66.

6/ Capital Cities/ABC, Inc., 4 FCC Rcd 5498 (1989). See also, Pinelands, Inc., FCC 92-376, released August 21, 1992, at ¶ 27.

7/ Attachment A, ¶ 3.

8/ Pinelands, Inc., FCC 92-376, released August 21, 1992.

including any possible additional interests in the New York City market, before taking any action."<sup>9/</sup> Moreover, the Commission stated that it would grant a temporary waiver of the one-to-a-market rule until, "full information is available to us as to [Investors'] interests and until the disposition of [their] interests is resolved through the show cause proceeding...."<sup>10/</sup> Now that Investors have reported all of their potentially attributable media interests and have promised to come into compliance with the Commission's rules as part of the resolution of the show cause proceeding, a permanent waiver is warranted.

Investors' interests in WWOR-TV and in WXPS(AM) and WRKL(FM) clearly meet the "Top 25 Market/30 Voices" waiver test. Investors respectfully request issuance of a permanent waiver to allow their continued ownership of their stock interests in Chris-Craft

---

<sup>9/</sup> Id. at paragraph 27.

<sup>10/</sup> Id.

Industries, Inc., Rockland Communicators, Inc., and West-Land Communicators, Inc. despite the overlap here in question.

Respectfully submitted,

GABELLI FUNDS, INC. and  
MARIO J. GABELLI

BY 

Alan Y. Naftalin  
Herbert D. Miller, Jr.  
M. Anne Swanson

of

Koteen & Naftalin  
Suite 1000  
1150 Connecticut Avenue, N. W.  
Washington, D. C. 20036  
(202) 467-5700

Their Attorneys

November 9, 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Order to Show Cause	)	
Directed Against	)	MM Docket No. 92-201
	)	
Mario J. Gabelli	)	
and	)	
Gabelli Funds, Inc.	)	

**JOINT STIPULATION**

The Chief, Mass Media Bureau and Mario J. Gabelli and Gabelli Funds, Inc., by their attorneys, hereby agree and stipulate as follows:

1. The Grade A contour of Station WWOR-TV, Secaucus, New Jersey, as computed in accordance with § 73.684 of the Commission's Rules, encompasses the entire community of license of Station WRKL(AM), New City, New York.
2. The Grade A contour of Station WWOR-TV, Secaucus, New Jersey, as computed in accordance with §73.684 of the Commission's Rules, encompasses the entire community of license of Station WXPS(FM), Briarcliff Manor, New York.
3. In 1989, the Commission found that there were 93 separate voices in the New York City market. Capital Cities/ABC, Inc., 4 FCC Rcd 5498 (1989). There has been no decisionally significant reduction in the number of separate voices since that time.

4. The predicted Grade B contour of Station KMSP(TV), Minneapolis, Minnesota, as computed in accordance with § 73.684 of the Commission's Rules, overlaps in whole or in part the service areas of Pine Island Telephone Company's cable television systems in Pine Island, Minnesota, and Hudson Township, Wisconsin.

Gabelli Funds, Inc., and  
Mario J. Gabelli

By: Alan Y. Naftalin  
their Attorney

Koteen & Naftalin  
Suite 1000  
1150 Connecticut Avenue N.W.  
Washington, D.C. 20036

Roy J. Stewart  
Chief, Mass Media Bureau

*Robert A. Bruner for*  
Charles E. Dziedzic  
Chief, Hearing Branch

*Larry A. Miller*  
Larry A. Miller

*Larry A. Miller for*  
Gary P. Schonman  
Attorneys  
Mass Media Bureau

Federal Communications  
Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554

October 13, 1992

4. The predicted Grade B contour of Station KMSP(TV), Minneapolis, Minnesota, as computed in accordance with § 73.684 of the Commission's Rules, overlaps in whole or in part the service areas of Pine Island Telephone Company's cable television systems in Pine Island, Minnesota, and Hudson Township, Wisconsin.

Gabelli Funds, Inc., and  
Mario J. Gabelli

  
By: Alan Y. Naftalin  
their Attorney

Koteen & Naftalin  
Suite 1000  
1150 Connecticut Avenue N.W.  
Washington, D.C. 20036

Roy J. Stewart  
Chief, Mass Media Bureau

Charles E. Dziedzic  
Chief, Hearing Branch

Larry A. Miller

Gary P. Schonman  
Attorneys  
Mass Media Bureau

Federal Communications  
Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554

October 13, 1992




## Certificate of Service

I, Donna Rhudy, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by Hand Delivery:

Honorable Joseph Stirmer  
Chief Administrative Law Judge  
Federal Communications Commission  
Room 224  
2000 L Street, N.W.  
Washington, D. C. 20554

Larry Miller, Esq.  
Gary Schonman, Esq.  
Hearing Branch  
Federal Communications Commission  
Room 7212  
2025 M Street, N.W.  
Washington, D. C. 20554

  
/s/ Donna Rhudy  
Donna Rhudy

November 9, 1992